

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

March 17, 2011

Agenda Item 3

**SUBJECT:** Minimum Side Setback Determination - (PA2011-013)  
Broadmoor Pacific View Planned Community

**PLANNER:** Jaime Murillo, Associate Planner  
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**SUMMARY**

Jamie and Patricia White, homeowners residing within the Broadmoor Pacific View community, have raised a concern with regard to staff's implementation of the side setback regulations of the Broadmoor Pacific View Planned Community text (PC text). Staff is seeking a determination from the Planning Commission regarding the appropriate application of side setbacks within the Broadmoor Pacific View Planned Community District.

This report outlines the setback regulations of the PC text, summarizes the Whites' concern and interpretation, provides an analysis of their interpretation, and provides a recommendation to resolve the ambiguity in the regulations.

**RECOMMENDATION**

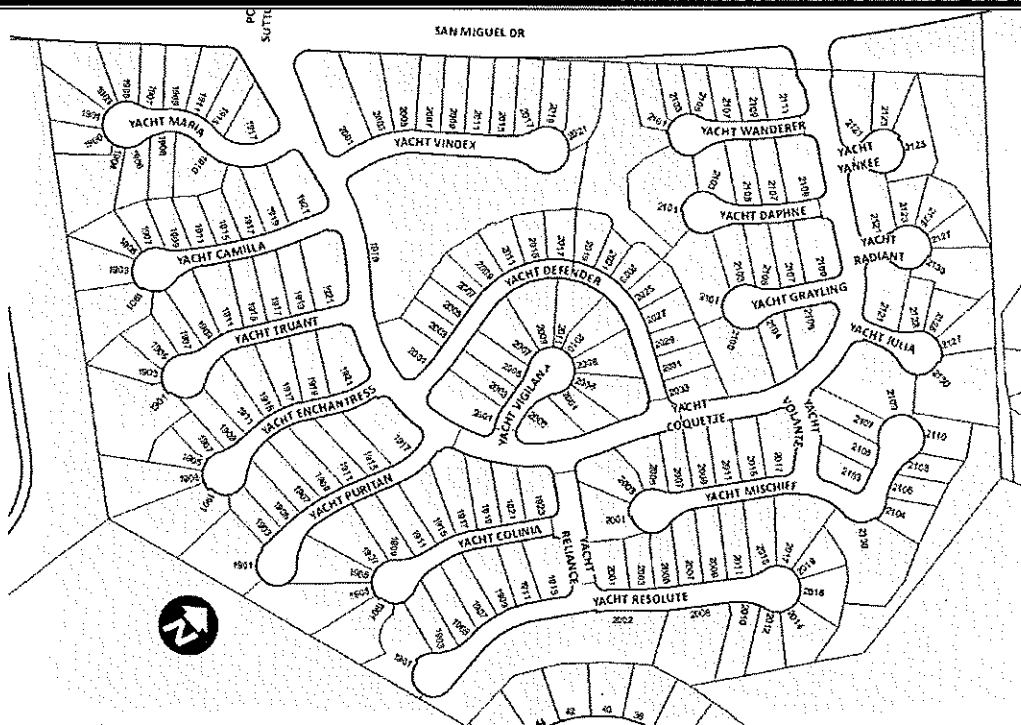
Make a determination that the Broadmoor Pacific View Planned Community text is silent on the application of side setbacks in non-zero lot line configurations, and therefore, to provide equity and certainty with regard to development limits, a minimum side setback of 5 feet should be provided.

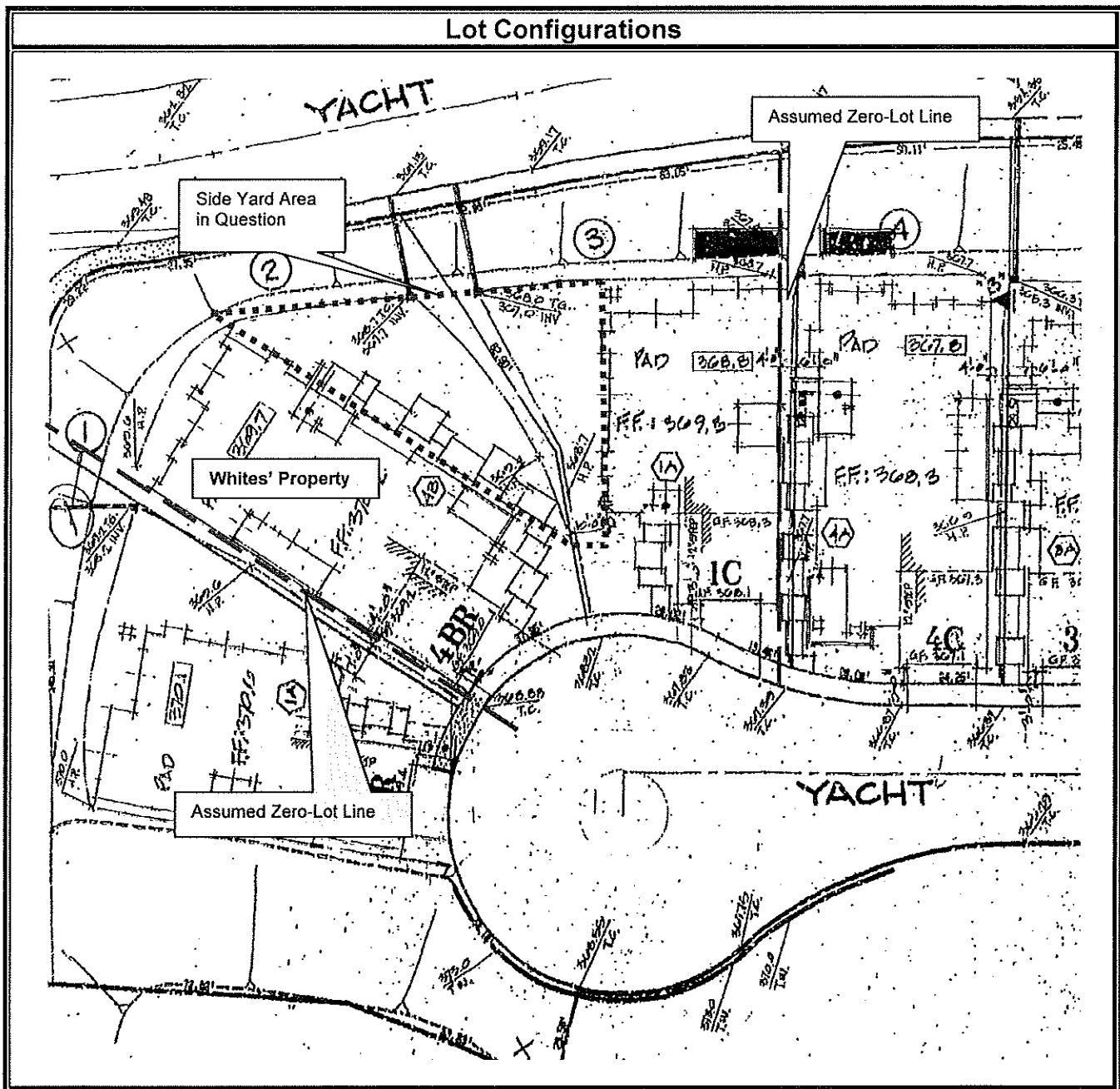
**INTRODUCTION**

**Community Setting**

The Broadmoor Pacific View community is located on the southeasterly side of San Miguel Road, adjacent to the Big Canyon Reservoir, and consists of 167 detached, single-unit dwellings. The development is a gated community that was developed in the late 1970's and was designed with terraced lots to provide a maximum number of view lots.

### VICINITY MAP





Broadmoor Pacific View Planned Community Text

On January 12, 1976, the City Council adopted the Broadmoor Pacific View Planned Community District regulations (PC text) and approved Tentative Tract Map. No. 9047 allowing for the subdivision of 50 acres of land into 167 single-unit residential lots and park and open space. The PC sets forth the development regulations for the residential

and recreational uses within the community. A copy of the Planned Community text is attached as Attachment No. PC1.

The PC text development regulations are unique in the following two aspects pertaining to setbacks:

1. Front and Rear Yards. Instead of establishing traditional front and rear yard setbacks, the PC text establishes "street setbacks" and "view setbacks".
  - a. For street setbacks, the PC text establishes a default 5-foot minimum setback from the curb line of local access streets and a 10-foot minimum setback along the collector street; however, the PC text also refers to a setback map/plan that establishes specific street setbacks for each of the lots. Generally, the street setbacks are staggered and are 5 feet, 10 feet, 18 feet, or 20 feet for the main structure. The PC text also includes a provision for garages to encroach to within 3 feet of the back of sidewalk or be setback a minimum of 20 feet.
  - b. For view (rear) setbacks, the PC text requires structures to be setback a minimum of 3 feet from the top of slope. For non-view lots, the setback is considered a traditional rear setback and a minimum 10-foot setback is required, which is measured from the toe of slopes. As in the case of street setbacks, the PC text also refers to a setback map/plan that establishes the specific view setbacks for each of the lots.
2. Side Setbacks. The PC text permits a zero-side setback on one side of a property, provided there are no openings in that building wall and that a minimum of 10 feet is provided between houses. In researching the subdivision files, it is evident that the original intent was to design the community with zero-side setbacks on one side, allowing offsetting of the houses on each individual lot in order to provide a larger, more usable side yard; however, when the community was actually constructed, zero-side setbacks were not implemented. Staff believes the explanation from deviating from the zero-side setback configuration may relate to Building Code concerns pertaining to openings and egress requirements. In most cases, the developer designed the homes in a manner that provides a minimum 4-foot setback on one side of the property line and a minimum 6-foot setback on the other side. Two lots side-by-side would comply with minimum required separation of 10 feet between houses. In order to implement the zero-side setback concept, the use of easements was established giving use of the 4-foot side area to the adjacent property for landscaping. For the purposes of this discussion, this configuration is referred to as the "assumed zero-lot line configuration". In some cases, lots located near the end of cul-de-sacs were not provided with landscaping easements because larger side setbacks were provided.

Purpose of this Discussion - 2003 & 2005 Yacht Mischief

Jamie and Patricia White, homeowners residing at 2003 Yacht Mischief, raised a concern with regard to the side setback regulation of the PC text. The White's property is located near the end of a cul-de-sac and because of the large side setback between their property and their neighbor to the east (2005 Yacht Mischief), they do not benefit from the CC&R's side landscaping easement provision. Their neighbor is planning on an addition to the house that would be setback 5 feet from their shared property line and would provide for a separation between houses that exceeds the minimum 10-foot separation requirement. The Whites' primary concern is that the addition proposed will block their northern view of the hills.

The Whites contend that the permitted site plan used for the initial construction of the homes in the community actually controls the allowable building envelopes for each of the lots within the community, including side setbacks. The Whites assert that the "final setback map" (Section IV.D. Setbacks from Streets) and the "approved site plans" (Section IV.E. Setbacks from Property Lines: Rear or Front) as referred to by the PC text are the permitted site plans used for construction and not the "Setback Map" staff historically and currently utilizes. Under the Whites interpretation, no additions beyond the original building envelope would be allowed. The Whites have submitted a letter with exhibits (Attachment No. PC2) in support of their interpretation.

**DISCUSSION**

Staff believes there are two questions that need to be resolved:

- 1) What site plan or map is the correct exhibit to reference when determining the street and view setbacks for homes in the Broadmoor Pacific View Planned Community?
- 2) How should side setbacks be regulated given that zero-side setbacks do not exist within the community?

Question No. 1- Street and View Setbacks

When the City was processing the PC text and tentative tract map for the community in 1975, a "Setback Map" (Attachment No. PC3) was prepared to establish the street and view setbacks. The Setback Map was included as an attachment to the 1975 Planning Commission staff report. The Setback Map has historically been used by staff to establish the minimum street and view setbacks (Front and Rear respectively) for residential development in the community. The setbacks listed on the map have also been added to the City's former Districting Maps (Attachment No. PC4) used to establish front setbacks throughout the City, affirming that the setbacks illustrated on the "Setback Map" are the correct setbacks to be used. Although staff has historically used the "Setback Map" as the official document for the purposes of establishing the

minimum street and view setbacks, staff's review of the issue has identified the following ambiguities:

- The PC text utilizes inconsistent terms when referring to the "Setback Map". Within Section IV.D. (Setbacks from Streets) the PC text refers to a "final setback map" and within Section IV.E. (Setbacks from Property Lines: Rear or Front), the PC refers to the "approved site plans".
- The "Setback Map" is based on the tentative tract map for the community and does not reflect the final lot configurations as recorded on the final tract maps. The Whites claim that the "Setback Map" is not the plan referred to in the PC Text because it does not accurately reflect the final lot configurations; however, staff's comparison of the tentative tract map and final tract maps revealed that all of the lots are substantially similar to their final configurations with the exception of only one lot that was moved from the end of one cul-de-sac to another. Also, the former Districting Map did not list a street setback for this one relocated lot.
- Within Section IV.D. (Setbacks from Streets), the PC text states that "Prior to the issuance of building permits for each phase of a project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development". Staff performed an extensive search of all historic documents and entitlements pertaining to the approval of this community in an attempt to locate a "final setback map", and was unable to locate such a document for the entire community. An exhibit titled "Final Setback Map for Tract 9260 (Model Area)" was located within the file and illustrates garage and house setbacks from the street property line and view side setbacks along the rear. The setbacks illustrated are more restrictive than those shown on the Setback Map and appear to match the actual setbacks as developed. To reiterate, no such final setback map exists for the rest of the community.

#### Question No. 2- Side Setback Requirement

Another concern raised by the Whites is with regard to staff's determination on the application of the side setback regulation. Section IV.E (Side Yard) of the PC text regulates side setbacks as follows:

*A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.*

The PC text is silent on what the minimum side setback should be in instances where a zero-side is not proposed. The PC text is unclear as to whether or not the minimum 10-foot separation requirement only applies in a zero-side circumstance, or if the 10-foot

separation is a stand alone requirement. This question becomes even more important when abutting lots have an assumed zero-lot line configuration on opposite sides of a common lot line (see exhibit on Page 3). In the absence of any other language within the PC text regarding the regulation of side setbacks, the Acting Deputy Director made the determination that no side setback is required from a property line, provided there is least 10 feet between houses and that there is only one zero side setback. This determination is consistent with how staff has historically reviewed development plans for remodels and additions in the past.

The existing development pattern of the community reveals that most of the houses maintain minimum side setbacks of 4 feet to the side property line and a minimum of 10 feet between structures. In 17 instances (affecting 34 lots), however, a modification permit (Modification Permit No. 1055 –Exhibit No. 14 of Attachment No. PC2) was approved allowing a building separation of only 8 feet. The modification permit clearly states that the development standard being modified is the 10-foot separation requirement of the PC text. This modification permit, approved in 1976, confirms that the City has historically interpreted that this provision of the PC text to mean that no side setback is required, provided a minimum of 10 feet is provided between houses.

As previously discussed, the Whites believe that the approved site plans (Exhibits 1, 2, 3 of Attachment No. PC2) used for construction of the homes is the “final setback map” referred in to in Section IV.D. (Setbacks from Streets), and therefore, the plans control the building envelopes for each of the lots within the community, including the side yard setbacks as dimensioned. Staff disagrees with this interpretation for the following reasons:

- Section IV.D (Setbacks from Streets), is intended to regulate setbacks from streets only. The only instances in which this section should apply to a side setback is when a side yard of a corner lot is adjacent to a street, in which case the minimum street setbacks would be required.
- The approved site plans used for construction of the homes only illustrates garage setbacks and side setbacks between structures. The plans do not include any street setbacks to the actual residential buildings or dimension any of the view setbacks from top of slope or to rear property line, therefore, they can not be used for the purposes of establishing street or view setbacks as specifically referenced by the PC text.
- If the approved site plans control the building envelope for all the houses in the community, then no additions beyond the original building envelope would ever be allowed. Historically, the Homeowner’s Association and the City has allowed additions consistent with the minimum standards of the PC text, and with regard to minimum side yards, the City has only required a minimum of 10 feet between houses.

### Setback Inequity

With the exception of the properties located on cul-de-sacs, most of the properties within the community maintain a 10-foot separation between houses, and therefore, there is no opportunity to expand into the side yards. However, in the few instances where properties are located on cul-de-sacs and provide large side yards exceeding the 10-minimum separation requirement, additions are possible. Since the houses are not technically on the property line (a minimum of 4 feet is provided in most cases), additions closer to the opposite lot line have been allowed so long the minimum 10-foot separation was provided to the neighboring house. Staff recognizes by not requiring a firm minimum setback to the side property line, an inequitable "first-come, first-served" situation is created where one property owner may build-out the side yard area impacting how close a neighbor can build in the future. To resolve this inequity, staff is recommending that in these instances, the Planning Commission should make an interpretation requiring that a minimum 5-foot side setback be provided.

To make this determination, the Planning Commission may determine that the PC text is totally silent on the application of side setbacks in non-zero lot line configurations, and therefore by default, the minimum side setbacks of the Zoning Code would apply. The most appropriate zoning designation in the Zoning Code applicable to the Broadmoor Pacific View community would be the Single-Unit Residential (R-1) District, in which case a minimum side setback of 4 feet would be required. However, in order to achieve a fair and equitable setback while achieving the 10-foot minimum separation requirement, it can be interpreted that a minimum side setback of 5 feet should be provided. To eliminate confusion in the future, staff will prepare a memo to this effect, which will be used to supplement the PC text. An exception will be created for those properties that maintain an "assumed zero-lot line configuration" and that currently provide a 4-foot side setback, in which case they shall be allowed to maintain their existing setback. The memo will also clarify that the "Setback Map" shall be used for the purposes of establishing street and view setbacks.

### Alternatives

If the Planning Commission disagrees with staff's recommendation on the application of side setback requirements, staff suggests the following alternatives:

1. Determine that no side setback is required from a property line, provided there is least 10 feet between houses. This determination is consistent with past practices. If the Planning Commission believes this is the most appropriate determination, staff will prepare a memo supplementing the PC text to this effect.
2. Since the minimum side setback that most properties maintain within the community is 4 feet on one side, the Planning Commission may find that a minimum side setback of 4 feet is appropriate, provided that a total of 10 feet is



provided between residential structures. This alternative would provide some certainty with regard to development limits and would preserve the existing development pattern of the community. If the Planning Commission believes this is the most appropriate determination, a memo supplementing the PC text would be prepared to this effect.

3. Determine that the permitted site plan used for the initial construction of the homes in the community actually controls the allowable building envelopes for each of the lots within the community, including side setbacks. This determination would have the effect of not allowing any additions or remodels beyond the existing building envelopes. If the Planning Commission believes this is the most appropriate determination, a memo supplementing the PC text would be prepared to this effect.
4. The Planning Commission shall make an alternative determination and state reasons for such determination.

#### Environmental Review

This action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### Public Notice

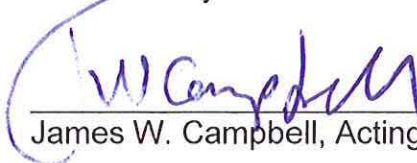
Notice of this agenda item was published in the Daily Pilot, mailed to all property owners located within the Broadmoor Pacific View Planned Community District, and mailed to the Broadmoor Sea View Homeowner's Association.

Prepared by:

Submitted by:



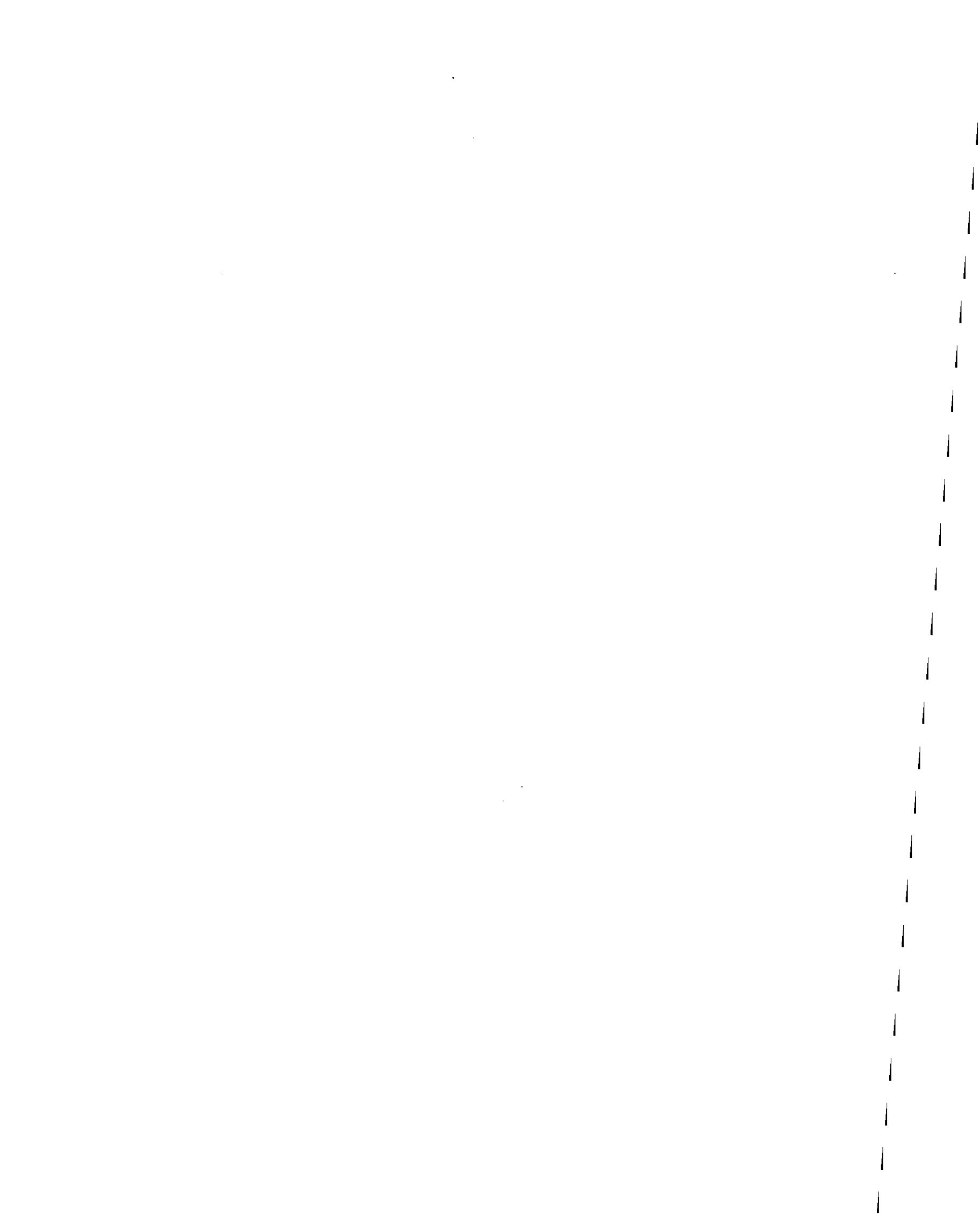
Jaime Murillo, Associate Planner



James W. Campbell, Acting Deputy Director

#### ATTACHMENTS

- PC 1 Broadmoor Pacific View Planned Community Text
- PC 2 Jamie and Patricia White's Letter (Exhibits provided separately due to bulk)
- PC 3 Setback Map
- PC 4 Districting Map



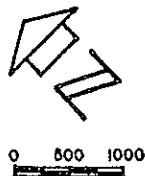
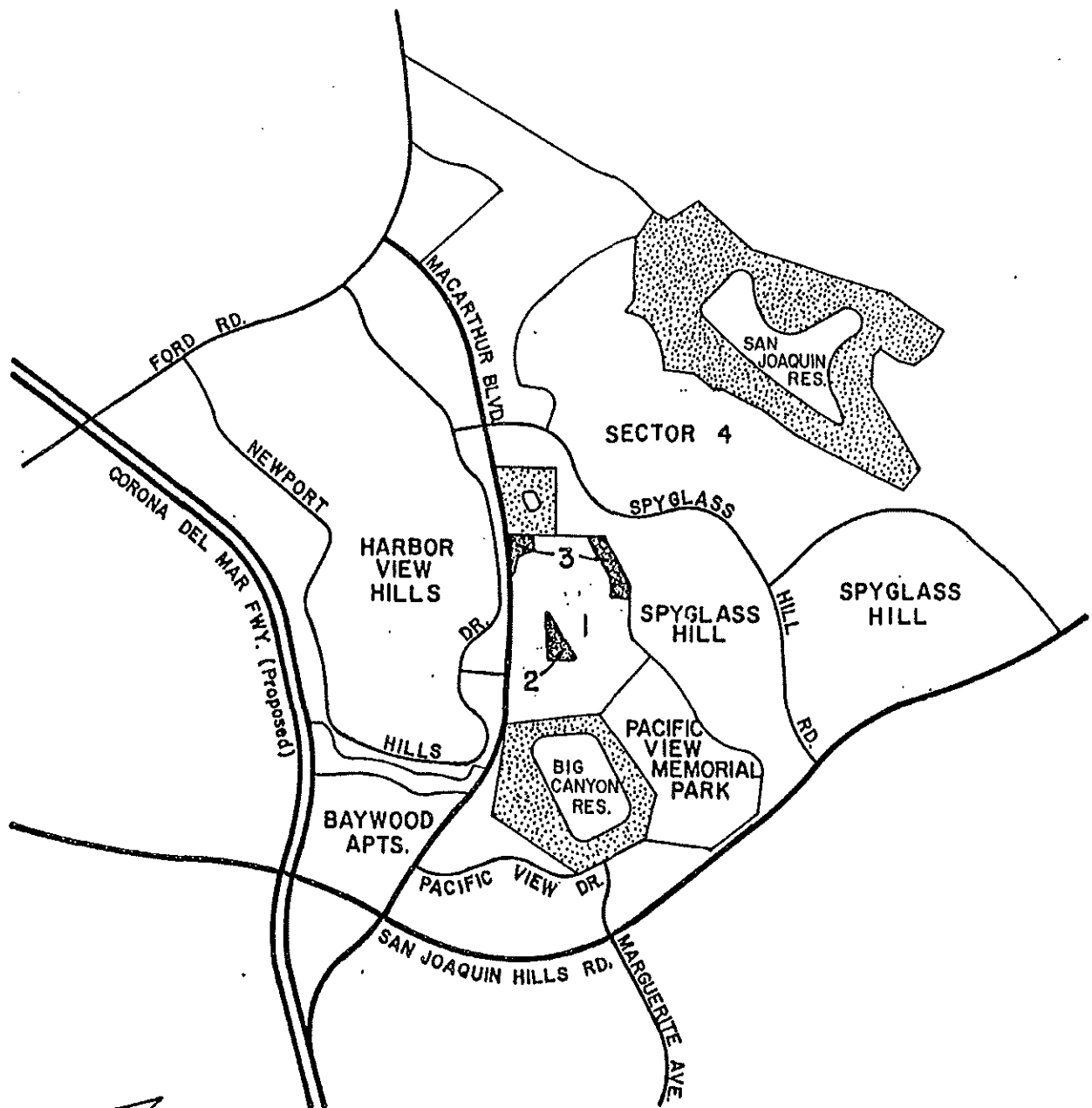
# **Attachment No. PC 1**

Broadmoor Pacific View Planned  
Community Text



**The Broadmoor Pacific View PC (Planned  
Community) District Amendment No. 18**

Adopted by the City Council on July 28, 1975



#### LEGEND

- LOW MEDIUM DENSITY RESIDENTIAL
- PARK AND RECREATION AREA
- OPEN SPACE AREA
- RESERVOIR

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## **INTRODUCTION**

The Broadmoor Pacific View PC (Planned Community) District within the City of Newport Beach has been prepared in accordance with Amendment No. 18 to the City of Newport Beach General Plan, adopted by the City Council on July 28, 1975, to provide low density residential development within a 50-acre parcel being subdivided from the Pacific View Memorial Park.

The purpose of this PC (Planned Community) District is to provide a method whereby this property may be classified and used for residential development while also allowing flexibility of land use and development standards.

Except as expressly stated within the text of this PC (Planned Community) ordinance, all applicable provisions and requirements of the City of Newport Beach Zoning Law shall apply.



## SECTION I. STATISTICAL ANALYSIS

### BROADMOOR PACIFIC VIEW

<u>Type</u>	<u>Area</u>	<u>Acres</u>	<u>D.U./acre</u>	<u>D.U.</u>	<u>Per/D.U.</u>	<u>Population</u>
Low Density Res.	1	45.9		175	3.6	630
Park	2	2.5				
Natural Open Space	3	1.6				
TOTAL		50.00		175	3.6	630

## SECTION II. GENERAL

An estimated total population of 630 persons is anticipated for the planning area. This figure has been used in estimating the need for community facilities.

### Schools

The community of Pacific View falls within the Newport-Mesa Unified School District. In an effort to anticipate the maximum number of school students to be generated by the total community, the highest student per unit factor was applied.

The following figures represent a projected total student enrollment based upon anticipated numbers of dwelling units to be constructed.

### AREA 1 NEWPORT-MESA UNIFIED SCHOOL DISTRICT

<u>Type</u>	<u>Students/ Dwelling Unit</u>	<u>Dwelling Units</u>	<u>Students</u>
Elementary (k-5)	.55	175	96
Junior High (6-8)	.30	175	53
Senior High (9-12)	.35	175	61
TOTAL			210

### Recreation

Private park and open space areas totaling approximately 2.5 acres are proposed to serve the recreational needs of Broadmoor Pacific View. In addition, a natural open space area has been provided in the north portion of the project area.

All private open and recreational areas within the development boundaries will be maintained by a private community association established by and consisting of homeowners within the subject development.

#### Uniform Building Code

No portion of this text withstanding, all construction within this Planned Community shall comply with the regulations of the Uniform Building Code as adopted by the City of Newport Beach.

### **SECTION III. DEFINITIONS**

The following definitions refer to the permitted uses described in the Development Standards contained in this ordinance:

1. Conventional Subdivision on a Planned Community  
A conventional subdivision of detached dwellings and their accessory structures on individual lots where the lot size may be less than the required average for the district, but where the density for the entire subdivision meets the required standards and where open space areas are provided for the enhancement and utilization of the overall development.

### **SECTION IV. LOW DENSITY RESIDENTIAL**

#### **A. Permitted Uses**

1. Single family detached dwellings.
2. Conventional subdivisions and conventional subdivisions on a Planned Community concept.
3. Parks, playgrounds, recreation or open space and green areas, riding, hiking, and bicycle trails and related facilities or a non-commercial nature.
4. Accessory buildings, structures, and uses where related and incidental to a permitted use.
5. One (1) on-site unlighted sign, not exceeding two (2) square feet in area, to advertise the lease, rental or sale of the property upon which it is located. Such sign may show only the name, address and the phone number of the owner, but shall not show the name, address, telephone number of any other description or identification of any person, firm or corporation other than the owner of said property.
6. Two (2) permanent community identification signs. Such signs may be lighted and may show only the name of the community.
7. One street identification sign at the entrance of each street. Such signs may show the street name, house numbers and owner's name.
8. Community recreational facilities and structures, subject to the development standards contained in Section V, Community Facilities, of this ordinance.

B. Area Per Dwelling

A minimum lot size of 4,500 square feet shall be provided. However, an average area of 8,000 square feet shall be provided for each dwelling unit except as approved by a use permit for cluster development. For the purpose of this section, average area per dwelling shall be defined as the average of all developed areas (to include parks, recreational and permanent open space) exclusive of all areas reserved for vehicular rights-of-way not including private driveways divided by the total number of dwelling units.

C. Maximum Building Height

All buildings shall comply with the restrictions established by the 24/28 foot height limitation district.

D. Setbacks from Streets

The following minimum setbacks shall apply to all dwelling structures (not to include garden walls or fences) adjacent to streets. Said setbacks are to be measured from the curb line.

<u>Street Designation</u>	<u>Setback from Curb Line</u>
Local Access Street	5'
Local Non-Access Collector Street	10'

Garages shall conform to the building setback requirements above except that front facing garage setbacks shall be as follows:

- 1) Where a sidewalk exists, the setback shall be 3 feet or a minimum of 20 feet, measured from the back of walk.
- 2) Where no sidewalk exists, the setback shall be 5 feet or a minimum of 20 feet, measured from back of curb.

Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development. The Community Development Director shall review said map and all future modifications of the setbacks shown on this map in view of setbacks listed in this ordinance and/or sound planning principles and shall either approve, modify, disapprove the setbacks shown, or refer the matter to the Planning Commission for a determination. In the case of modification or disapproval, the applicant may appeal to the Planning Commission for further consideration.

E. Setbacks from Property Lines

All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions.

Rear or Front Yard

The building setback on the view side shall be a minimum of three (3) feet from the top of the slope. The rear yard setback shall be a minimum of ten (10) feet from the toe of the slope. The street and view side setbacks shall be established on the approved site plan.

Side Yard

A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures.

F. Fences, Hedges, and Walls

Fences shall be limited to a maximum height of eight (8) feet and are allowed within all setback areas, except in the street side and view side setback where a maximum height of three (3) feet shall be maintained. The maximum height of fences within the view side setback may be increased to six (6) feet provided they are wrought iron, clear glass or other open type construction.

G. Trellis

Open trellis and beam construction shall be permitted to extend from the dwelling to within three (3) feet of the property line in the side yard, except that such trellis structures may extend to one (1) foot from the side property line provided they are fire resistant construction in accordance with the requirements of the City of Newport Beach. The maximum height of the trellis shall be eight (8) feet. These areas shall not be considered in calculating lot area coverage; however, trellis areas shall not exceed 20 percent of the remaining open space of a developed lot. Trellis and beam construction shall be so designed as to provide a minimum of 50 percent of the total trellis area as open space for the penetration of light and area to areas which it covers.

H. Parking

Parking for residential uses shall be in the form of not less than two (2) garage spaces and two (2) uncovered guest spaces per dwelling unit. Guest parking may be located on street or off street. Cluster development guest parking shall be as required by a use permit.

I. Maximum Site Area Coverage

For aggregate building coverage, the maximum shall be 50 percent of any lot. For the purpose of this ordinance, coverage shall include all areas under roof, but shall not include trellis areas.

J. Architectural Features

1. Architectural features, including fireplaces, balconies, bay windows, cornices and eaves, may extend to two and one-half (2-1/2) feet into any front, or rear yard setback. These architectural features may extend to one (1) foot from the side yard property line

except that such architectural features may extend to the side property line provided they are fire protected in accordance with the requirements of the City of Newport Beach, and that a minimum of four (4) feet separation is maintained from similar projections or structures on an adjacent lot.

2. Uncovered balconies, decks, patios, walls or railings to a height of four (4) feet above the pad elevation may project a maximum of eleven (11) feet into the view side setback of a maximum of eight (8) feet beyond the top of slope adjacent to the unit, only on approximately 20% of the lots as indicated on the Setback Map. Each balcony, deck, patio, wall or railing shall be selected from one of three standard designs submitted by the developer and shall in each case be subject to the approval of the Modification Committee.

## **SECTION V. COMMUNITY RECREATIONAL FACILITIES**

The following regulations apply to the development of private community recreational facilities. Prior to the issuance of a building permit, plot plans, elevations and any other such documents deemed necessary by the Community Development Developer shall be subject to the review and approval of the Community Development Director.

### **A. Permitted Uses**

The following uses, provided they are in conjunction with private community recreational facilities and not commercial in nature, shall be allowed.

1. Parks, play grounds, tennis courts, pool, recreation or open green areas, riding, hiking and bicycle trails and related facilities.
2. Accessory buildings, structures and uses related and incidental to a permitted use.
3. Signs identifying or giving directions to permitted uses and facilities. No sign shall exceed thirty-five (35) square feet in area.

### **B. Maximum Building Height**

All buildings shall comply with the height restrictions established by the City for the 24/28 foot height limitation district.

### **C. Setbacks**

Twenty-five (25) feet from all residential property lines, and ten (10) feet from any streetside property lines. No structure shall be located closer to a residential structure on an adjacent site than a distance equal to twice the height of the non-residential building. The height of the non-residential structure above the grade elevation of the residential site shall apply. Structures which abut a park, greenbelt or other permanent open space may abut the common property lines.

D. Landscaping

A minimum of ten (10) feet (depth) of continuous landscaping shall be maintained adjacent to all street or highway rights-of-way in the community recreational facilities area, except for perpendicular access driveways and pedestrian walkways. Landscaping shall not exceed thirty (30) inches in height within ten (10) feet of an intersection or access drive.

E. Parking

Parking for twelve (12) vehicles shall be provided within the Community Recreational Facilities area. Location of said parking is subject to review of the Community Development Director. The Community Development Director shall review said facilities and require the amount of off-street parking deemed appropriate, relative to the intended use and activities of such facilities.

## **Attachment No. PC 2**

Jamie and Patricia White's Letter  
(Exhibits provided separately due to bulk)





**James and Patricia White  
2003 Yacht Mischief  
Newport Beach, California 92660  
(949) 759-1434**

January 14, 2011

Mr. Joel Fick  
Acting Community Development Director  
City of Newport Beach  
3300 Newport Boulevard.  
Newport Beach, California 92658

Dear Mr. Fick,

Thank you for meeting with us last Wednesday. The purpose of this letter is to provide you with the documents that support the conclusion that the "approved plot plans" controlled the building envelope for Broadmoor, the original builder of the development, and for any future modifications by the homeowners of Sea View.

**Approved Plot Plans and PC No. 18**

Each of the three plot plans has check numbers and the notation, "appr" with an approval date written in hand on them (see Exhibits 1, 2 and 3). These approved plot plans are referred to in this letter as the "APPs" and show the setbacks and footprint for each house with dimensions to: (1) the street side property line, (2) the blank wall side of the house property line (referred to as the zero side) and (3) in almost all cases, the opposite side property lines. When the window side of two houses face each other and both are oriented toward a common property line and they are both more than 10 feet away from that line, then a dimension is shown for only the house that is closer to the line because when one house is more than 10 feet away from the line, the 10 foot separation rule is satisfied. The opposite side property line occurs eleven times throughout the development and is the line between two houses that face each other. All the houses in Sea View were originally designed with a blank side with no windows and one door opening for fire egress from an atrium and the side opposite the blank side with many windows and usually the front door.

The Broadmoor Pacific View PC (Planned Community) District Amendment No. 18 adopted by the City Council on July 28, 1975 and referred to in this letter as "PC No. 18" (see Exhibit 4) states:

1. In Section IV.D. Setbacks from Streets, that "Prior to the issuance of building permits for each phase of the project, a final setback map shall be submitted to the Community Development Director indicating the setbacks to all building areas proposed in the development".
2. In Section IV.E. Setbacks from Property Lines that "All setbacks listed under this subsection refer to all property lines not affected by Subsection D above. Dwellings may orient towards the opposite property line in order to take advantage of view conditions".

3. In Section IV.E. Rear or Front Yard that "The street and view side setbacks shall be established on the approved site plan". These statements: "a final setback map shall be submitted.....indicating the setbacks to ALL building areas" and "setbacks listed under this subsection refer to ALL property lines" and "setbacks shall be established on THE approved site plan" indicate that there must exist approved plot plans which delineate setbacks from all property lines. The documents which are exhibits to this letter prove conclusively that the plot plans submitted for each of the three tracts which comprise Sea View are the approved plot plans, APPs, which establish the setbacks and building footprint for each house in Sea View.

PC No. 18 was incorporated into The Broadmoor Sea View Covenants, Conditions and Restrictions, the "CC&Rs", which were recorded in the Official Records of Orange County, California on September 14, 1976, in Article VII of the CC&Rs as a document entitled Planned Community District Regulations Broadmoor Pacific View, prepared by Raub, Bein, Frost and Associates on October 23, 1975, and revised and Approved on January 12, 1976 (see Exhibit 5). I have reviewed both PC No. 18 and the Planned Community District Regulations and find them to be substantially the exact same word for word document except for the title. Therefore, the Sea View Homeowners Association is bound by PC No. 18 because it is included in the CC&Rs and since PC No. 18 establishes the setbacks and shows the footprint for each house, then that footprint cannot be modified without approval of both the HOA architectural review committee and the City through a specific process. Thus the open space between and around many of the houses that was created in the original development design is preserved. PC No. 18 was modified by Modification 1055 which was filed with the City on July 6, 1976 (see Exhibit 13) which clearly states that houses were oriented to take advantage of views and the distance between some houses was minimized to create more open space at the end of streets and cul-de-sacs. Our goal has not been to stop remodel activity in Sea View but rather to develop a clear path for a homeowner to follow when designing the remodel of a house that includes building outside the original footprint.

#### **List of Exhibits**

1. Broadmoor Sea View Plot Plan for Tract 9260, marked as Plan Check 456-76 and marked approved 8-31-76. I am providing sheets 1 through 6 of 48. The remaining sheets are building construction drawings.
2. Broadmoor Sea View Plot Plan for Tract 9047, marked as Plan Check 1132 and 1133 and marked approved 11-19-76. I am providing sheets 1 through 4 of 55.
3. Broadmoor Sea View Plot Plan for Tract 9261, marked as Plan Check 1177 and 1178, stamped with a date of Jan 11, 1977 and marked approved 2-3-77. I am providing sheets 1 through 4 of 50.
4. PC No. 18 adopted by the City Council on July 28, 1975.
5. Planned Community District Regs., Broadmoor Pacific View, prepared October 23, 1975 and revised and approved January 12, 1976.
6. Emails between Jamie and Pat White and Jaime Murillo dated September 8<sup>th</sup> and 9<sup>th</sup>, 2010.
7. Map which appears to be a grading map showing street and view side setbacks, no date shown.
8. Letter to Patrick Alford from James and Patricia White dated October 26, 2010.
9. Letter to James White from Patrick Alford dated November 2, 2010.

10. Setback Map for Tract 9047, 167 lots received by the City, October 28, 1975.
11. Map of street addresses for Sea View showing 167 lots but in a different configuration than is shown on Setback Map of 10/28/75.
12. Hand written letter from Jamie White to Patrick Alford, no date, but probably after November 2, 2010.
13. Modification Application Number 1055 dated 7-6-1976.
14. Modification Committee Findings and Action Number 1055 dated July 20, 1976.
15. Broadmoor Seaview Plot Plan for Tract 9047, sheets 1 through 4 for Tract 9260, sheets 3 and 4 for Tract 9261, two sheets not numbered, all part of Modification 1055 marked pages 1 through 9 and stamped submitted July 6, 1976 (although the day of the month is difficult to see).
16. Letter from James Campbell to James White dated November 9, 2010.
17. Tract No. 9260 marked as accepted and filed June 17, 1976.
18. Tract No. 9047 marked as accepted and filed July 22, 1976.
19. Tract No. 9261 marked as accepted and filed July 22, 1976. Note that the survey for all 3 tracts was completed in February of 1976.
20. List of Affected Homeowners.

### **Background**

Sometime last year, our neighbor, Mr. Gregg McConaughy, presented us with a preliminary rough drawing of what he intended to build as a bedroom and bathroom addition. The City Planning Department had told his architect that there was no setback requirement from our common property line. I thought that could not possibly be correct, so I visited the planning department desk on the first floor of your building and over a few days time got several different answers as to what setback is required from our common property line. Finally, I was told that the planning department had had a meeting to discuss the matter and concluded that the common property line setback was zero. I did not believe that was true, so I contacted Jaime Murillo by email (see Exhibit 6) which started my search for the meaning and intent of PC No. 18. Jaime concluded in his email to me that, "PC No. 18 is extremely flexible and doesn't have a minimum side yard setback requirement, with the exception that buildings must maintain a minimum 10-foot separation".

Still not satisfied my wife and I met with Jaime at which time he provided us with what looked like a preliminary grading map which showed only street and view side setbacks (see Exhibit 7). This map is a very preliminary grading plan, as there are significant differences between how the project was graded and the contour lines on the plan, and may have been used to propose some preliminary ideas about street and view side setbacks. The setbacks from the street shown on the map are in many cases different than what is shown on the APPs, which do correctly show what was actually built. Jaime explained that side yard setbacks were not addressed in PC No. 18. My wife and then went to lunch, discussed our meeting with Jaime and concluded that what we were being told just did not add up. We have each been in the real estate development business for over twenty years. We then went back to the city offices, found Jaime, and told him we were not satisfied. Jaime then asked Patrick and a fellow from the building department to join an impromptu meeting to discuss this issue.

During this meeting one interesting point that came up was that they did not know when and how the door in the blank wall of each and every house got there. They just did not seem to know when or how that was approved. This is a significant point because it is this door, an opening in the blank side of the house, that caused the house to be a minimum of 4 feet away from the property line instead of the zero setback that is referred to in PC No. 18 Section IV.E., paragraph "Side Yard". The houses are built 10 feet apart as is required under the "Side Yard" paragraph, except those that are the subject of the Modification 1055. Therefore, the zero setback allowance that is specified in the "Side Yard" paragraph was not used due to the opening in the blank wall side of the house and could not be used on the opposite property line because that other side of the house has many windows and in most cases the front door. As Sea View was actually built there is no circumstance that would allow for a zero setback to any property line. The meeting ended with our being told that the City could really not be of any help to us other than to say that the buildings had to be 10 feet apart and beyond that it was up to the Sea View HOA to set the development standards.

Still not satisfied with what I was being told, I wrote a letter to Patrick Alford (see Exhibit 8). In that letter dated October 26, 2010, I conclude that PC No. 18 clearly states that the setbacks from ALL property lines are established by dimensions shown on the approved plot plans, the APPs. In the letter I requested an official written opinion of the setbacks from all property lines as are indicated in the PC No.18. On November 2, 2010, Patrick responded to my letter (see Exhibit 9). I had asked him to provide me with a site or plot plan which showed the setbacks to all property lines as was required in Section IV.D. of PC No. 18. Patrick, in his letter to me concluded that a setback map (see Exhibit 10) was submitted to and approved by the then-Community Development Director as provided for in Section IV.D. of the PC No. 18 text. He noted that only front and rear setbacks were identified. This map, entitled Setback Map, Tract 9047, was received by the City on October 28, 1975 and is another copy of the same map that Jaime gave me.

As I mentioned above, this map is inconsistent with what is built in Sea View. For example, on Yacht Vindex, eleven lots are shown, but only ten lots exist on that street and on Yacht Daphne four lots are shown, but five lots exist on that street. The setbacks of 18 feet from the street, shown on the map, have not been followed in about 20 cases. Further, on lot 146 this map shows a 5' typical setback from toe of slope, while PC No. 18 requires 10'. Finally, the lot lines as shown in many cases are very different from those shown on the APPs. The map does indicate top of slope or view side setbacks to be 3 feet typical as is specified in the PC No. 18 text. Another map (see Exhibit 11) indicating the Sea View street addresses shows many lots in a quite different configuration to that of the "Setback Map" provided to us by Patrick. Patrick's letter in his opening paragraph recites the issue of whether setbacks were established by an approved site plan but he does not address that issue in his letter. At the end of his brief letter he concludes that Section IV.E. "street and view side setbacks" refer to front and rear setbacks and not side setbacks. It is true that the paragraph under Section IV.E. "Rear or Front Yard" defines the setbacks from top of slope or the view side at 3 feet and the toe of slope or rear yard at 10 feet and it also says that these will be established on the approved site plan. It does not say that side yard setbacks will not be established on that same approved site plan. In fact the side yard setbacks are clearly shown on what I have referred to above as the APPs. This is such an

incomplete and incorrect conclusion that I felt the planning department had not conducted a thorough review of my question nor was the department taking my request seriously.

### **Modification No. 1055**

Soon after my meeting with Patrick, while looking at the microfiche copies of various maps for Sea View, I discovered that there were some houses in Sea View that were closer together than 10 feet apart. I wrote a hand written note to Patrick and asked that he look into this issue (see Exhibit 12). Within a day or so, I think, he called me on the telephone and said that he had found a Modification Application No. 1055 dated 7-6-76 and approved 7-20-76 (see Exhibits 13 and 14). Patrick told me that attached to Modification 1055 is a plot plan consisting of nine pages that appears to be dated July 6, 1976, which is the same date that Modification App. 1055 was filed with the City (see Exhibit 15). These plot plan pages do not include any dimensions nor do they include the entire development since Yacht Vindex, Yacht Maria and Yacht Camilla are omitted. This makes sense because those streets did not have lots that were part of Modification 1055. The Modification 1055 form lists the lots that are involved in Modification 1055. All of these lots are at the end of their respective streets and the houses are blank side to blank side, except for lots 1 and 2 of Tract 9047. The house on lot 2 has been oriented to have its blank side toward lot 1 instead of toward lot 3 in order to take advantage of both an ocean and valley view.

Section IV.E. of PC No. 18 "Setbacks from Property Lines" states: "Dwellings may orient towards the opposite property line in order to take advantage of view conditions". In the "Present Use" block of the Modification 1055 form are the hand written words "5' side yards" indicating that side yard setbacks had been set on some plan. In the "Request" block of the form are written the words: "That one lot receive an easement for (undetermined word or letters) use from the other and the side yard setbacks be reduced to 4' each or total 8' ". That is interesting because I had been told that side yard setbacks had not been addressed by PC No. 18 nor established on any document and now we see conclusively that side yard setbacks had been determined, as evidenced by the statements on the Modification 1055 document, and were established on the APPs. Modification 1055 reduced from 5' to 4' the side yard setbacks for the lots specified on Modification 1055. In fact upon careful analysis of all the APPs I have found that except for the specific lot pairs that were the subject of Modification 1055, where the separation was reduced to 8 feet total, all of the other houses are separated by a minimum of 10 feet. An exception to this is the lot pair 22-23 of Tract 9260, which is not part of Modification 1055, is only 8 feet apart. I suspect they were meant to be listed on the Modification 1055 but just did not get listed. It seems that the plan checker did not pick up the discrepancy. Interestingly, most of the houses that are not part of the Modification 1055 have a setback from the property line of 4 feet on the blank wall side of the house. This is a change from what was indicated in the "Present Use" block of Modification 1055. Only lot 2 and the pairs of lots 11-12, 24-25 and 34-35 of Tract 9260 have a setback of 5 feet from the blank wall side of the house to the property line. Lot 12 of Tract 9261 appears to have a 6 foot setback from the blank wall side of the house to the property line.

These discrepancies point to the fact that the only place to see a complete picture of the setbacks that were approved prior to the issuance of building permits is on the APPs. Again, this is the only complete and therefore controlling set of documents, therefore, they must be the "approved plot plans" mentioned in PC No.18. that were to establish all the property line setbacks. The

concept of “approved plot plans” was in the PC No. 18 language and now we see it again in Modification 1055 in the document that indicates that Modification 1055 was approved on the condition: “1. That development shall be in substantial conformance with the approved plot plans”. It is reasonable to assume the when the word “development” is used here it means the entire development and not just the lots that were the subject of Modification 1055. There should be no question that the Sea View development was to proceed in substantial conformance with PC No. 18 as modified by Modification 1055 and all incorporated into The Broadmoor Sea View CC&Rs. Therefore, the Sea View Homeowners Association is bound by PC No, 18, as modified by Modification 1055, because it is part of the CC&Rs.

In the body of the approved Modification 1055 form, its approval is granted on the condition: “That development shall be in substantial conformance with the approved plot plans” and for the following reasons: 1. The proposed development is in general conformance with the Planned Community Development Standards for “Broadmoor Pacific View.” 2. The reduced separation between structures will occur only at the ends of streets or cul-de-sacs where the end dwelling units will be reversed so as to eliminate blank walls along the exterior side yards of the subject lots. 3. The proposed development is a better site solution than originally planned since more open space will be provided at the ends of streets and cul-de-sacs. Because of the language in Modification 1055, the body of evidence that Sea View was to be a planned community developed under standards contained in PC No.18 as modified by Modification 1055, which standards are to be clearly defined in a set of approved plot plans is strong and complete.

### **Meeting with Jim Campbell**

I was therefore completely surprised when Patrick, in view of what he had just provided to me, still denied that there were approved plot plans that controlled the development of Sea View initially and in the future. Therefore, I asked to meet with Jim Campbell to either set up a planning commission hearing or hopefully have Jim understand the evidence and provide me with a written official ruling from the City that the approved plot plans showed the setbacks to all property lines that those setbacks may not be modified without approval from the City and the Sea View architectural committee. The meeting with Jim Campbell was set on November 4, 2010.

My wife and I met with Jim. He listened to my presentation during a one hour meeting with Patrick in attendance. During the meeting Jim seemed to realize that it is difficult to conclude that a zero side yard setback is allowed in Sea View. He said that he thought it would be easy to defend a decision on his part that a four foot side yard setback could be imposed. Patrick did not seem so inclined but the meeting ended with our believing that Jim had understood our presentation. I was quite surprised when I received his letter affirming the planning department’s opinion that a zero side yard setback is allowed in Sea View (see Exhibit 16). He cited the “Side Yard” paragraph of Section IV.E. “A zero side yard setback between the structure and the lot line shall be permitted on one side provided there are no openings on the zero side yard wall and that a total of ten (10) feet shall be provided between structures”. He went on to say: “a zero foot side setback is permitted as long as a minimum of ten (10) feet is maintained between structures. Beyond that, the PC text is silent in regards to side setbacks”. Jim’s logic fails to include the phrase: “provided there are no openings on the zero side yard wall”. Further, he fails to recognize that Modification 1055 states in the “Present Use” block of

the form, the hand written note, "5' side yards". This setback was required since there is an opening (door) in each and every house.

The document granting approval for Modification 1055 conditions that the development be in substantial conformance with the approved plot plans. Further, as I have recited above the reasons for the approval are that Modification 1055 improves the development since it creates among other considerations more open space for the house at the end of a streets and cul-de-sacs. Jim interprets that since the zero provision was not used on the blank wall side of the house (it could not be used there because there was an opening) that it could be used on the opposite property line as it was referred to in the first paragraph of Section IV.E. That interpretation ignores the fact that the side of the house that is opposite the blank wall always contains multiple windows and often the front door and, therefore, would not be eligible for a zero setback.

### **Conclusion and Other Affected Lots**

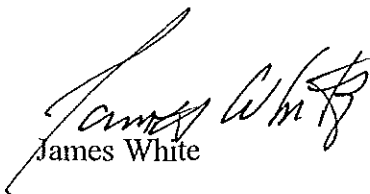
In the beginning of this letter I said that this all began because my neighbor wants to add a bedroom and bathroom to his house. The Sea View Architectural Review Committee, "ARC" approved his plans after meeting with the planning department and being told that a zero side yard setback was allowed as long as the structures were 10' apart. Subsequently, we appealed that decision to the HOA board of directors and they overturned the approval because as was stated in the HOA attorney's letter to McConaughy: "the ARC was not aware of PC No. 18." Further, the Board determined that in view of the 10' foot separation of structures provision in PC No.18 that in any event a 5 foot side yard setback should be the compromise for the common property line between our two houses.

McConaughy has recently resubmitted plans to the ARC with the 5 foot setback. We are an original owner of our home and have believed for the 30 plus years we have lived here that the open space between our homes was to be permanent and that our view of the valley could not be blocked by landscaping or structures. The view issue we will leave for the judgment of the ARC and HOA Board but the issue of whether the APP controls the footprint of the original houses and that a change to that footprint is a change to PC No. 18 is really the subject and essence of this letter. I have included in this letter copies of the final Tract maps 9047, 9260 and 9261 (see Exhibits 17, 18 and 19). All the documents I have presented in this letter conclusively show that there are approved plot plans and that Modification 1055 conditions that the development must be in substantial compliance with those approved plot plans. Therefore, it should be concluded that for a Sea View homeowner to add new construction to his home outside the original footprint, approval from the Sea View ARC must be granted and then an application and approval to modify PC No.18 must be secured from the City. This would be a most reasonable conclusion given the overwhelming evidence and analysis that we have provided in letter. In cases where there is no opposition from neighboring lots, the City approvals could be granted administratively. However, in the event of opposition, the homeowner proposing the modification of PC No. 18 would have the opportunity to request a planning commission hearing. If there is a dispute, then a public hearing affords the parties the opportunity to present their argument to the full planning commission, an unbiased body accustomed to making such decisions. This creates a professional and experienced forum at little cost to all concerned.

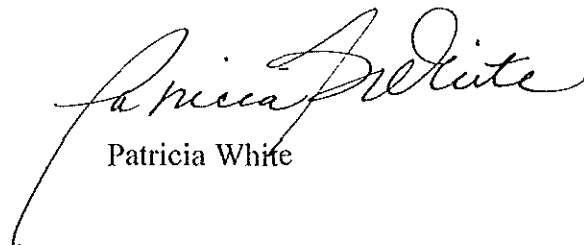
There are 20 other property owners in Sea View who are affected by this common property line situation. I have attached a list of their names and addresses (see Exhibit 20). I have visually inspected each lot and each of their homes seems to be in its original side yard building footprint. This would then be the first time in Sea View that this situation has come up. I have contacted each affected property owner and most of them want to be informed and included in discussions because this outcome will set a precedent for future development of their lots and their neighbor's lot.

We thank you for your courtesy and interest in conducting a thorough review of this issue. Also, we want to acknowledge the time and courtesy that Jaime, Patrick and Jim have shown us throughout this process.

Sincerely,



James White



Patricia White

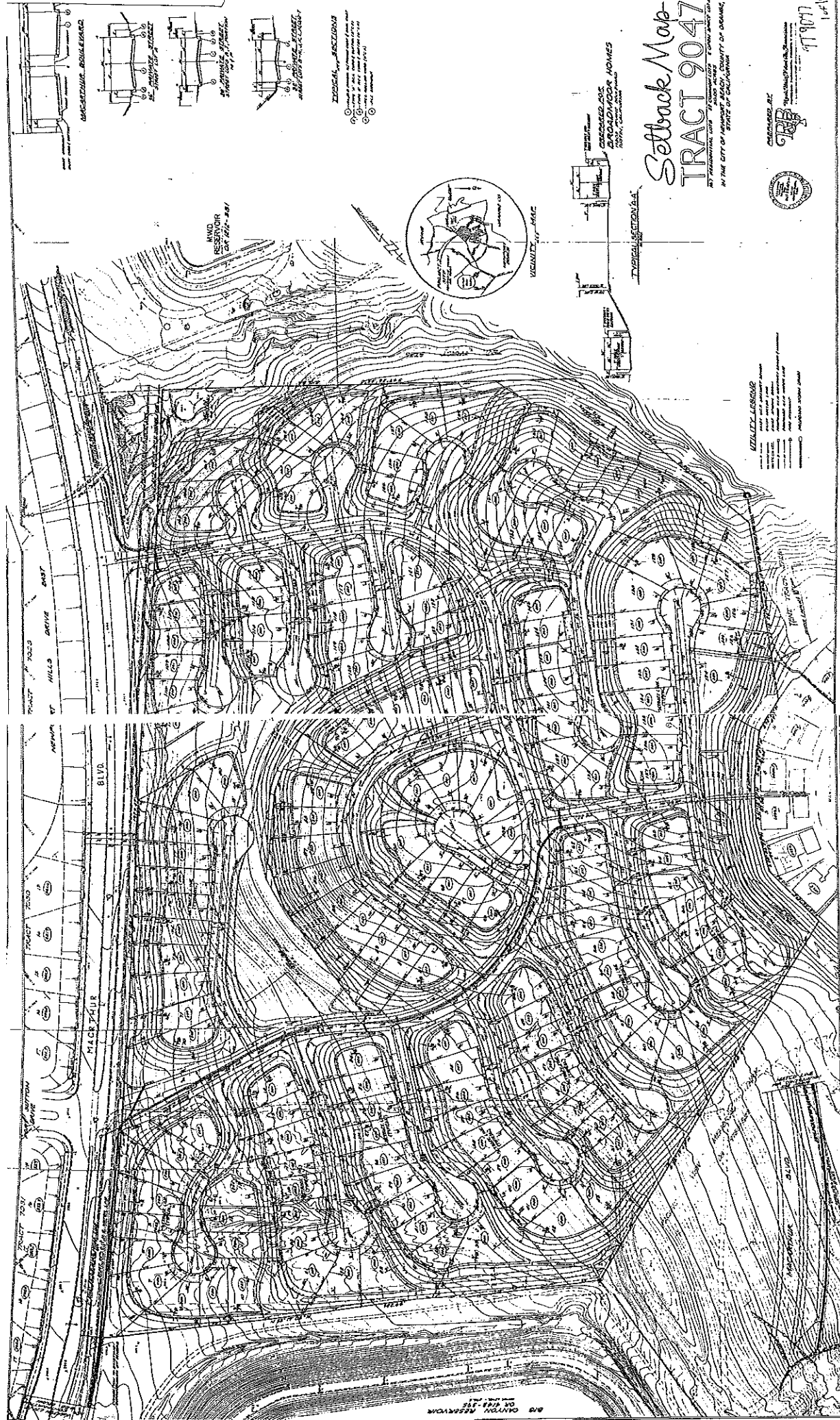
Cc: Dana Smith, Assistant City Manager (without Exhibits)  
Councilman Keith Curry (without Exhibits)



# **Attachment No. PC 3**

Setback Map





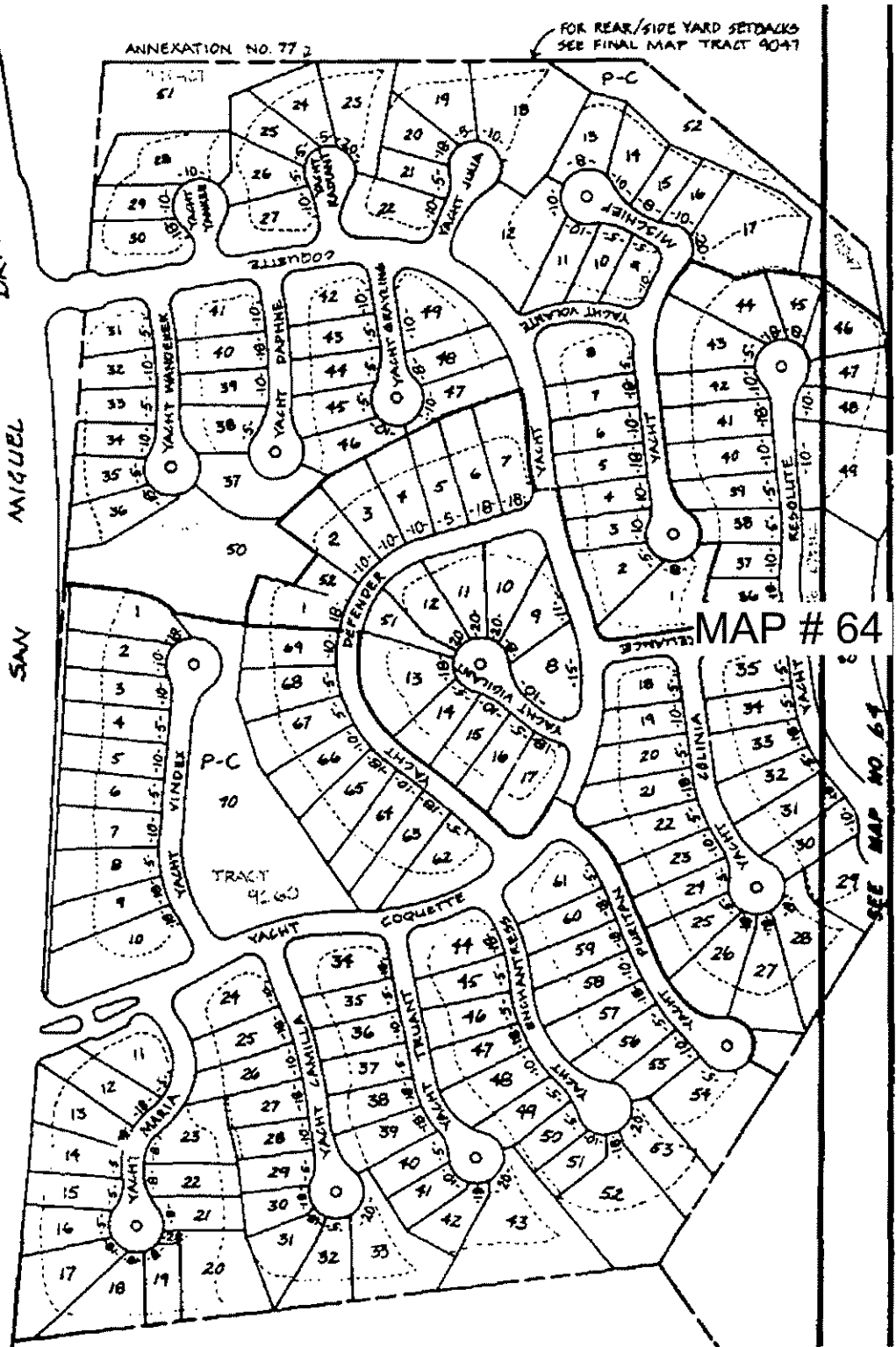
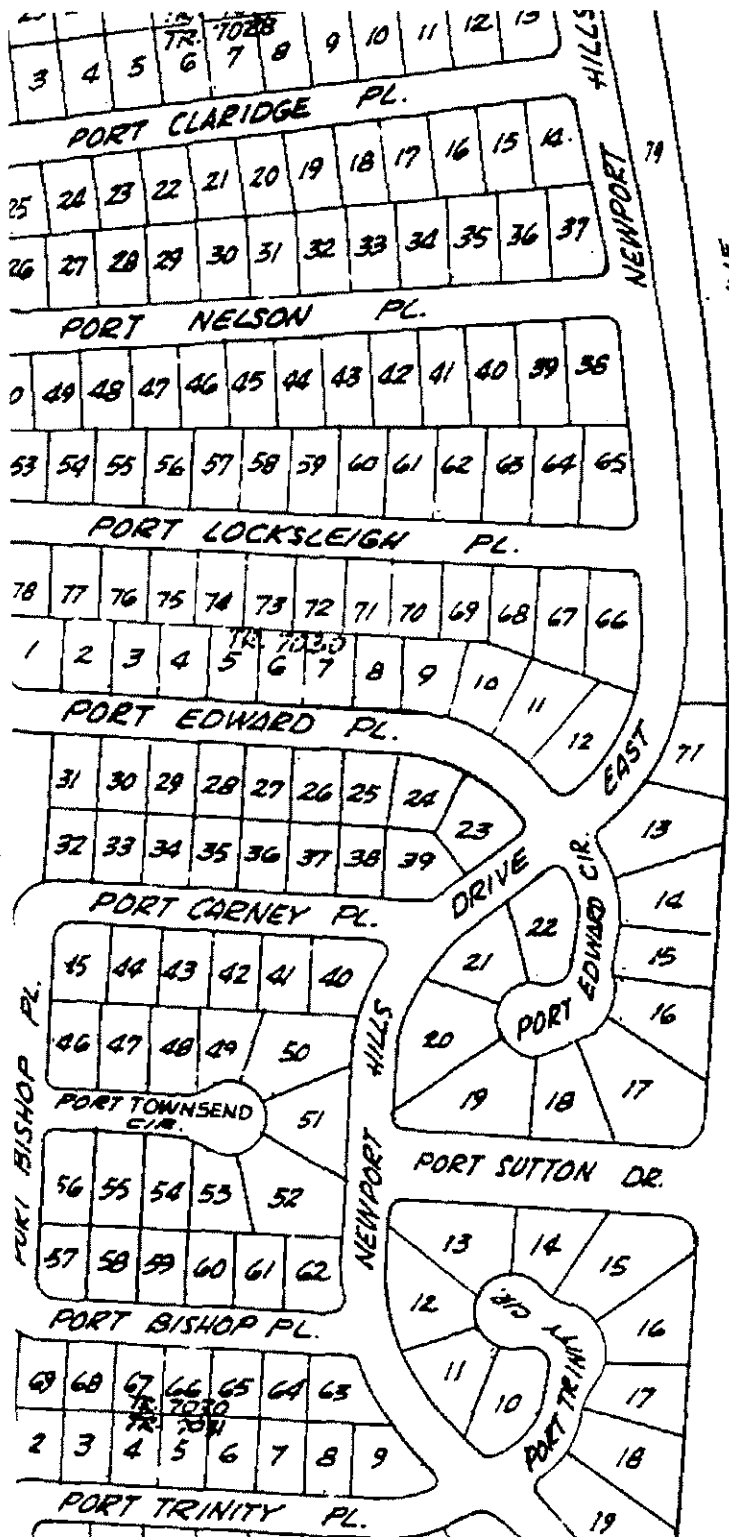


# **Attachment No. PC 4**

Districting Map







MAP # 64

SEE MAP NO. 64